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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,275	11/14/2003	Douglas J. Kelly	04Z9-104790	2042
7590	04/20/2006			EXAMINER DAVIS, CASSANDRA HOPE
James R. Brueggemann, Esquire Sheppard, Mullin, Richter & Hampton LLP 48th Floor 333 South Hope Street Los Angeles, CA 90071-1448			ART UNIT 3611	PAPER NUMBER

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/714,275	KELLY, DOUGLAS J.
Examiner	Art Unit	
Cassandra Davis	3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 January 2006.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 and 34-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 37 and 38 is/are allowed.
- 6) Claim(s) 1-12 and 34-36 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5,7, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassata, U. S. Patent 5,016,368.

3. With respect to claim 1, Cassata teaches a garment or clothing identifier label comprising a planar member 52 having a front side 28 and a rear side 24; an attachment mechanism having a rigid piercing element 54 extending from the rear side 24 of the planar member, and a backing member 16 defining a hole 40 aligned to receive the piercing element 54; and indicia 14 .

4. Cassata does not teach the indicia including country of origin, garment provider, and fiber content. However, since the specific indicia claimed does not have an unobvious functional relation with the identifier, the specific indicia has not been given patentable weight. It would have been obvious to one having ordinary skill in the art at the time this invention

was made to construct the device taught by Cassata with any suitable indicia to convey a desired message.

5. With respect to claim 4 and 5, since the applicant does not disclose that having the planar member and the backing member of thickness between 1mm and 5mm solves any stated problem or is for any particular purpose, it appears that constructing the device taught by Cassata of any suitable thickness would perform equally well in identifying clothing.

6. With respect to claim 7, Cassata teaches the piercing element 54 extends through the hole and is joined in place. See figure 4.

7. Claims 1-5,7, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapata, U. S. Patent 3,009,381.

8. With respect to claim 1, Rapata teaches a name plate comprising a planar member 26 having a front side and a rear side; an attachment mechanism having a rigid piercing element 28 extending from the rear side of the planar member, and a backing members 32 defining a hole 42 aligned to receive the piercing element 28; and indicia.

9. Rapata does not teach the indicia including country of origin, garment provider, and fiber content. However, since the specific indicia claimed does not have an unobvious functional relation with the identifier, the

specific indicia has not been given patentable weight. It would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the device taught by Rapata with any suitable indicia to convey a desired message.

10. With respect to claim 4 and 5, since the applicant does not disclose that having the planar member and the backing member of thickness between 1mm and 5mm solves any stated problem or is for any particular purpose, it appears that constructing the device taught by Rapata of any suitable thickness would perform equally well in identifying clothing.

11. With respect to claim 7, Rapata teaches the piercing element 54 extends through the hole and is joined in place. See figure 4.

12. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapata as applied to claim 8 above, and further in view of Prentiss, U. S. Patent 1,690,129. Prentiss teaches button comprising a front member 2/6 and a backing member 16. The front member has indicia on the front surface and a pair of piecing elements 3. The backing member has a pair apertures 20 adapted to receive the piecing elements.

13. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapata as applied to claim 8 above, and further in view

of Qauartararo, Jr., U. S. Patent 5,785,181. Quartararo teaches a bottom tag 108 which is a RFID tag containing a microchip with stores a unique number. It would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the button taught by Rapata with a microchip containing to provide specific information about the garment in which the button is attached.

14. Claims 1-7, 9, 34, 35, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Megibow, U. S. Patent 2,897,561 in view of Cassata.

15. With respect to claim 1, Megibow teaches a garment or clothing identifier/button or tag comprising a planar member 1 or 32 having a front side and a rear side 20; an attachment mechanism having a rigid piercing element 2 and 3 extending from the rear side 20 of the planar member, and a backing member 6, (figures 2, 5, and 6) defining a holes 7-10 aligned to receive the piercing element 2 and 3; and name tag indicia (not shown).

16. Cassata teaches a button or identifier having indicia.

17. Cassata or Megibow does not teach the indicia including country of origin, garment provider, and fiber content. However, since the specific indicium claimed does not have an unobvious functional relation with the

identifier, the specific indicium has not been given patentable weight. It would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the device taught by Megibow with indicia as taught by Cassata with any suitable indicia to convey a desired message.

18. With respect to claim 4 and 5, since the applicant does not disclose that having the planar member and the backing member of thickness between 1mm and 5mm solves any stated problem or is for any particular purpose, it appears that constructing the device taught by Megibow or Cassata of any suitable thickness would perform equally well in identifying clothing.

19. With respect to claims and 9 and 6, the piecing element 2 and 3 are curved when inserted in the backing or receiving element. See figure 2.

20. With respect to claim 7, Megibow or Cassata teaches the piercing element 54 extends through the hole and is joined in place. See figure 4.

21. With respect to claim 8, Megibow teaches a pair of piercing elements 2 and 3 and a plurality of holes 7-10.

#### ***Allowable Subject Matter***

22. Claims 37 and 38 are allowable.

***Response to Arguments***

23. Applicant's arguments filed January 10, 2006 have been fully considered but they are not persuasive.

The applicant argues that the prior art of record does not teach the indicia including country of origin, garment provider comment and fiber content.

Regarding claims 1 and 6, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide whatever indicia desired by the user (whether it be an content information, country of origin, etc), since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. In re Gulack 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of sheet does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious

functional relationship between the printed matter and the substrate which is required for patentability.

The rejection is maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cassandra Davis whose telephone number is 571-272-6642. The examiner can normally be reached on Monday-Friday 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

Application/Control Number: 10/714,275  
Art Unit: 3611

Page 9

access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Cassandra Davis  
Primary Examiner  
Art Unit 3611

CD  
April 17, 2006